**Canton-Potsdam Hospital *and* Service Employees' International Union, Local 200, AFL-CIO.** Case 3-CA-10867

July 6, 1982

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on February 1, 1982,[1] by Service Employees' International Union, Local 200, AFL-CIO, herein called the Union, and duly served on Canton-Potsdam Hospital, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 3, issued a complaint on March 8, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on January 7, 1982, following a Board election in Case 3-RC-8136, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[2] and that, commencing on or about January 21, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. The complaint further alleges that since on or about January 21, 1982, Respondent has failed and refused to supply the Union with (1) a list of all the names of bargaining unit employees, including their addresses, classifications, rates of pay, and hiring dates; (2) a schedule of all benefits, such as vacation, holidays, personal time, health and life insurance coverage, pension program, etc.; and (3) a copy of any employee handbook or benefit booklet currently in effect. On March 16, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 24, 1982, counsel for the General Counsel filed directly with the Board a motion to transfer the proceeding to the Board, to strike Respondent's first affirmative defense, and for summary judgment. Subsequently, on March 30, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its response to the Notice To Show Cause, Respondent admits its refusal to bargain with the Union and to provide the Union with the information it seeks. However, it attacks the Union's certification on the grounds that the Regional Director and the Board erred in failing to grant a hearing with regard to the allegedly unlawful electioneering set forth in Respondent's exceptions to the Regional Director's Report on Objections. Respondent further denies that the information sought by the Union is relevant to the Union's function as a bargaining representative. The General Counsel contends, in essence, that Respondent in contesting the Union's certification is attempting to relitigate issues raised and decided in the underlying representation proceeding.[3] The General Counsel further contends that the information the Union seeks is presumptively relevant and must be provided to the bargaining representative.

Our review of the record herein, including the record in Case 3-RC-8136, indicates that on August 6, 1981, the Union filed a petition in which it sought to represent certain of Respondent's employees. On September 4, 1981, the Regional Director approved a Stipulation for Certification Upon Consent Election signed by the parties which provided for an election in the following bargaining unit:

> All full-time and regular part-time outpatient clerks, outpatient leaders, admitting clerks, switchboard operators, outpatient clerk/regis-

[1] An amended charge was filed on March 5, 1982.

[2] Official notice is taken of the record in the representation proceeding, Case 3-RC-8136, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[3] The General Counsel moves to strike Respondent's first affirmative defense set forth in its answer to the complaint on the ground that it raises issues already litigated in the underlying representation case. While we agree that these issues have been litigated, we acknowledge Respondent's desire to preserve its position for court review. Accordingly, we deny the General Counsel's motion to strike.

tration, patient representatives, bookkeepers, accountants, night clerks, clerk-trainees, data processing clerks, payroll clerks-junior and senior, radiology department secretary, purchasing department secretary, medical laboratory clerks, medical laboratory secretary, pharmacy clerk, physical therapy department secretary, medical records clerks, medical records transcriptionists, medical records analyst, medical records admitting clerk, and medical records technician employed by the Employer at its Potsdam, New York hospital, but excluding service and maintenance employees, confidential employees including the secretary to the Director of Nursing, employee relations clerk and employee relations clerk trainee, licensed practical nurses and technical employees, registered nurses, professional employees, guards, and supervisors as defined in the Act.

Thereafter, an election was held on September 25, 1981. The tally of ballots showed 26 votes cast for, and 24 against, the Union. There were no challenged ballots. Respondent filed timely objections to the conduct of the election, alleging, *inter alia*, that the Union engaged in objectionable electioneering during the voting period and between voting sessions and that the Union threatened employees in order to secure their votes. Respondent's objections were overruled in their entirety by the Regional Director in his Report on Objections on October 30, 1981. Thereafter, Respondent filed exceptions with the Board to portions of the Regional Director's report, essentially reiterating the contention that the Union engaged in objectionable electioneering and arguing that a hearing was warranted to resolve the issues raised by its objections concerning electioneering. On January 7, 1982, the Board issued its Decision and Certification of Representative (unpublished) in which it adopted the Regional Director's findings and recommendations, specifically stated that a hearing was not warranted, and certified the Union as the bargaining representative of the employees in the appropriate unit.

On or about January 15, 1982, the Union requested Respondent to recognize it as the exclusive bargaining representative of Respondent's employees in the appropriate unit and to bargain with it collectively. On this same date the Union also requested Respondent to furnish it with the following information: (1) a list of all the names of bargaining unit employees, including their addresses, classifications, rates of pay, and hiring dates; (2) a schedule of all benefits, such as vacations, holidays, personal time, health and life insurance coverage, pension program, etc.; and (3) a copy of any employee handbook or benefit booklet currently in effect. On or about January 21, 1982, Respondent refused to recognize and bargain with the Union and to furnish the Union with the information it requested.

With respect to the requested information, Respondent denies that it is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the appropriate unit. However, it is well established that the requested information is presumptively relevant to such purpose[4] and Respondent offers nothing to rebut this presumption.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[5]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### 1. THE BUSINESS OF RESPONDENT

Respondent, nonprofit New York corporation, maintains its principal office and place of business in Potsdam, New York, where it is engaged in the operation of a general hospital. During the past year, in the course and conduct of its operations at the Potsdam facility, Respondent derived gross revenues in excess of $250,000, and during the same period of time purchased and received at its Potsdam facility goods and materials valued in excess of $10,000 which were shipped to it directly from points outside the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

[4] See, e.g., *Bel-Air Bowl, Inc.*, 247 NLRB 6 (1980).

[5] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

## II. THE LABOR ORGANIZATION INVOLVED

Service Employees' International Union, Local 200, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. *The Representation Proceeding*

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time outpatient clerks, outpatient leaders, admitting clerks, switchboard operators, outpatient clerk/registration, patient representatives, bookkeepers, accountants, night clerks, clerk-trainees, data processing clerks, payroll clerks-junior and senior, radiology department secretary, purchasing department secretary, medical laboratory clerks, medical laboratory secretary, pharmacy clerk, physical therapy department secretary, medical records clerks, medical records transcriptionists, medical records analyst, medical records admitting clerk, and medical records technician employed by the Employer at its Potsdam, New York hospital, but excluding service and maintenance employees, confidential employees including the secretary to the Director of Nursing, employee relations clerk and employee relations clerk trainee, licensed practical nurses and technical employees, registered nurses, professional employees, guards, and supervisors as defined in the Act.

#### 2. The certification

On September 25, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 3, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on January 7, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

### B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about January 15, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit.

Commencing on or about January 15, 1982, and at all times thereafter, the Union has requested that Respondent supply it with (1) a list of all the names of bargaining unit employees, including their addresses, classifications, rates of pay, and hiring dates; (2) a schedule of all benefits, such as vacation, holidays, personal time, health and life insurance coverage, pension program, etc.; and (3) a copy of any employee handbook or benefit booklet currently in effect. The requested information is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the appropriate unit.

Commencing on or about January 21, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Commencing on or about January 21, 1982, and at all times thereafter, Respondent has refused and continues to refuse to supply the information which the Union requested.

Accordingly, we find that Respondent has, since January 21, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and refused to supply the Union with the information it requested for the purpose of collective bargaining, and that, by such refusals, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is

reached, embody such understanding in a signed agreement. We shall also order Respondent to provide the information requested by the Union.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. Canton-Potsdam Hospital is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees' International Union, Local 200, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time outpatient clerks, outpatient leaders, admitting clerks, switchboard operators, outpatient clerk/registration, patient representatives, bookkeepers, accountants, night clerks, clerk-trainees, data processing clerks, payroll clerks-junior and senior, radiology department secretary, medical laboratory clerks, medical laboratory secretary, pharmacy clerk, physical therapy department secretary, medical records clerks, medical records transcriptionists, medical records analyst, medical records admitting clerk, and medical records technician employed by Respondent at its Potsdam, New York, hospital, but excluding service and maintenance employees, confidential employees, including the secretary to the Director of Nursing, employee relations clerk and employee relations clerk trainee, licensed practical nurses and technical employees, registered nurses, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since January 7, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 21, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit and to supply the Union with the information it requested for the purpose of collective bargaining, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Canton-Potsdam Hospital, Potsdam, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees' International Union, Local 200, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time outpatient clerks, outpatient leaders, admitting clerks, switchboard operators, outpatient clerk/registration, patient representatives, bookkeepers, accountants, night clerks, clerk-trainees, data processing clerks, payroll clerks-junior and senior, radiology department secretary, purchasing department secretary, medical laboratory clerks, medical laboratory secretary, pharmacy clerk, physical therapy department secretary, medical records clerks, medical records transcriptionists, medical records analyst, medical records admitting clerk, and medical records technician employed by the Employer at its Potsdam, New York hospital, but excluding service and maintenance employees, confidential employees including the secretary to the Director of Nursing, employee relations clerk and employee relations clerk trainee, licensed practical nurses and technical employees, registered nurses, professional employees, guards, and supervisors as defined in the Act.

(b) Refusing to supply the above-named labor organization, upon request, with information relevant and necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, supply the above-named labor organization with (1) a list of all the names of bargaining unit employees, including their addresses, classifications, rates of pay, and hiring dates, (2) a schedule of all benefits, such as vacation, holidays, personal time, health and life insurance coverage, pension program, etc., and (3) a copy of any employee handbook or benefit booklet currently in effect.

(c) Post at its Potsdam, New York, facility copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees' International Union, Local 200, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to supply the above-named labor organization, upon request, with information relevant and necessary for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time outpatient clerks, outpatient leaders, admitting clerks, switchboard operators, outpatient clerk/registration, patient representatives, bookkeepers, accountants, night clerks, clerk-trainees, data processing clerks, payroll clerks-junior and senior, radiology deparment secretary, purchasing department secretary, medical laboratory secretary, pharmacy clerk, physical therapy department secretary, medical records clerks, medical records transcriptionists, medical records analyst, medical records admitting clerk, and medical records technician employed by the Employer at its Potsdam, New York hospital, but excluding service and maintenance employees confidential employees including the secretary to the Director of Nursing, employee relations clerks and employee relations clerk trainee, licensed practical nurses and technical employees, registered nurses, professional employees, guards, and supervisors as defined in the Act.

WE WILL, upon request, supply the above-named labor organization with (1) a list of all

the names of bargaining unit employees, including their addresses, classifications, rates of pay, and hiring dates, (2) a schedule of all benefits, such as vacation, holidays, personal time, health and life insurance coverage, pension program, etc., and (3) a copy of any employee handbook or benefit booklet currently in effect.

CANTON-POTSDAM HOSPITAL